

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HORACIO AVILES-DELGADO, aka
Cirilo Santa Maria-Martinez,

Defendant - Appellant.

No. 05-10127

D.C. No. CR-04-00209-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Horacio Aviles-Delgado appeals from his sentence imposed following his guilty plea conviction for unlawful reentry of deported alien, in violation of 8 U.S.C. § 1326(a).

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Aviles-Delgado contends that the district court violated his constitutional rights in enhancing his sentence under 8 U.S.C. § 1326(b) and § 2L1.2(b)(1)(C) of the advisory Sentencing Guidelines based on prior criminal convictions that were neither proved beyond a reasonable doubt to a jury nor admitted as part of the guilty plea and that *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed.2d 350 (1998), is no longer good law. This contention is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005).

AFFIRMED.